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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

IN THE MATTER OF THE DETERMINATION)	
OF THE RIGHTS TO THE USE OF THE)	
SURFACE WATERS OF THE YAKIMA RIVER)	
DRAINAGE BASIN, IN ACCORDANCE WITH)	NO. 77-2-01484-5
THE PROVISIONS OF CHAPTER 90.03,)	
REVISED CODE OF WASHINGTON,)	CONDITIONAL FINAL
	ORDER AS A FINAL
STATE OF WASHINGTON,)	JUDGMENT PURSUANT TO
DEPARTMENT OF ECOLOGY,)	CR 54(b) AND RAP 2.2(d)
	AND PRETRIAL ORDER
Plaintiff,)	NUMBER 8 AS AMENDED
)
v.)	KENNEWICK IRRIGATION
	DISTRICT, COURT CLAIM
JAMES J. ACQUAVELLA, et al.,)	NO. 629
)
Defendants.)	

THIS MATTER has come on regularly before the Court with Kennewick Irrigation District having had its evidentiary hearing on April 3-7, 1995. The following parties stipulated to KID's water rights: KID, represented by attorney Brian J. Iller, Ecology, represented by Alan M. Reichman, Assistant Attorney General, the United States, represented by attorney Charles Shockey, and the Yakama Nation represented by attorney Jeffrey S. Schuster. All parties to this adjudication were provided an opportunity to file exceptions to this stipulation. None were received. An evidentiary hearing on the stipulation was held on October 11, 2001.

CONDITIONAL FINAL ORDER
KENNEWICK IRRIGATION DISTRICT

1 This Court filed its Report of the Court Concerning the
2 Water Rights for the Kennewick Irrigation District on
3 October 16, 2001. This Report incorporates the Stipulation
4 of the parties, and the Factual and Legal Basis for
5 Settlement between KID and Ecology. The Kennewick Irrigation
6 District's water rights are set forth in the Stipulation.
7 Thus, the Court considers the Report to be the final
8 resolution of the Kennewick Irrigation District's water
9 right.

10 This Conditional Final Order will ultimately be
11 incorporated into a final decree that determines and
12 integrates all of the rights of the parties in this
13 adjudication, at which time it shall be forwarded to the
14 Director of the Department of Ecology for issuance of
15 Certificates of Adjudicated Water Right.

16 Based on the foregoing, IT IS:

17 ORDERED, ADJUDGED and DECREED that the final decree
18 shall set forth the following in regards to the Kennewick
19 Irrigation District, Court Claim No. 629:

20 1. The water rights for the Kennewick Irrigation
21 District are set forth in the Stipulation (Document 15279).
22 The basis for the Stipulation is found in the Factual and
23 Legal Basis for the Settlement (Document 15276). Both
24 documents are included herein.

25 2. This Conditional Final Order, relating to the
26 confirmation of water rights to the United States, Bureau of
27 Reclamation as trustee for the Kennewick Irrigation District
28

1 and its water users, constitutes a final order for purposes
2 of appeal [see RAP 2.2(d)], except for purposes of final
3 integration of all confirmed rights as provided in Section
4 XII of Pretrial Order No. 8, procedures for Claim Evaluation,
5 dated March 3, 1989, of this Court.
6

7 DATED this 16th day of October, 2001.
8

9 Walter A. Stauffacher
10 WALTER A. STAUFFACHER, JUDGE

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RECEIVED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
WATERS OF THE YAKIMA
DRAINAGE BASIN, IN
ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03
REVISED CODE OF WASHINGTON,

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
Plaintiff,

v.

JAMES J. ACQUAVELLA, et al,
Defendants.

NO. 77-2-01484-5

STIPULATION

RE: KENNEWICK IRRIGATION
DISTRICT

CLAIM NO. 629

FILED

JUL 12 2001

KIM M. EATON
YAKIMA COUNTY CLERK

JUL 12 2001

The State of Washington Department of Ecology ("Ecology"), the United States, the Yakama Nation, and the Kennewick Irrigation District, after extensive Court-approved facilitated negotiations and mediation, hereby respectfully submit this stipulation to resolve Claim No. 629. The parties request that the Court include the described water rights in a Conditional Final Order and Final Decree for the U.S./KID as adjudicated water rights.

1. U.S./KID WATER RIGHTS. To be decreed in the name of the United States of America for the use and benefit of the Kennewick Division of the Yakima Project, the Kennewick Irrigation District and their water users entitled to delivery from the Kennewick Division and the Kennewick Irrigation District (collectively referred to herein as "KID") water rights sufficient to permit diversion for beneficial use of:

- a. Quantity (Acre-feet)

15279

Total quantity applied to beneficial use is 231,017 acre-feet, more fully described as follows:

i. To divert with an August 6, 1891-priority date up to and including 18,000 acre-feet per annum,

(1) of which from 15,600 up to the full 18,000 acre-feet, measured at the KID Main Canal headworks, may be diverted from the Yakima River at Prosser Dam, and

(2) of which up to 2,400 acre-feet, measured at Wanawish Dam (formerly Horn Rapids Dam), may be diverted from the Yakima River at Wanawish Dam.

ii. To divert with a May 10, 1905 priority date up to and including 213,017 acre-feet per annum, from the Yakima River at Prosser Dam, 84,674 acre-feet to be measured at the KID Main Canal headworks, and 128,343 acre-feet to be calculated from the 2 hydraulic pumps at the Chandler pumping plant.

b. Diversion Rate (Cubic Feet Per Second)

Combined total diversions to KID may not exceed 782 cfs. This is a combination of a maximum of 345 cfs measured at the KID Main Canal headworks, a maximum of 431 cfs calculated from the 2 hydraulic pumps at the Chandler pumping plant and up to an additional 6 cfs diverted at Wanawish Dam. These diversions are more fully described as follows:

i. To divert with an August 6, 1891 priority date up to and including 50 cfs, measured at KID Main Canal headworks and Wanawish Dam, and

ii. To divert with a May 10, 1905 priority date up to and including 732 cfs. This is a combination of a maximum of 301 cfs measured at the KID Main Canal headworks and a maximum of 431 cfs calculated from the 2 hydraulic pumps at the Chandler pumping plant.

c. Purposes of Use

i. Of the rights in 1.a.i.(1) and 1.a.i.(2), above, up to 18,000 acre-feet for irrigation and other U.S./KID purposes, measured at KID Main Canal headworks and Wanawish Dam.

ii. Of the right in 1.a.ii., above, up to 84,674 acre-feet for irrigation and other U.S./KID purposes, measured at KID Main Canal headworks.

iii. Of the right in 1.a.ii. above, up to 128,343 acre-feet to power 2 hydraulic pumps, calculated at the Chandler pumping plant.

d. Priority Date

August 6, 1891, as to 18,000 acre-feet annually, and May 10, 1905, as to the remainder.

e. Points of Diversion

i. Prosser Dam, 1350 feet west and 350 feet south, more or less, from the northeast corner of Section 2, T. 8 N., R. 24 E.W.M., being within the east $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ and the west $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of said Section 2.

ii. Chandler pumping plant, 2450 feet west and 1700 feet south, more or less from the northeast corner of Section 17, being within the west $\frac{1}{2}$ of the

northwest 1/4 of the southwest 1/4 of the northeast 1/4 of Section 17, T. 9 N., R. 26 E.W.M.

iii. KID Main Canal headworks, 200 feet east and 1100 feet north, more or less, from the southwest corner of Section 16, being within the northwest 1/4 of the southwest 1/4 of the southwest 1/4 of Section 16, T. 9 N., R. 26 E.W.M.

iv. Wanawish Dam, 2400 feet east and 3500 feet south, more or less, from the northwest corner of Section 3, being within the southeast 1/4 of the northeast 1/4 of the southwest 1/4 of Section 3, T.10 N., R. 27 E.W.M.

f. Place of Use

i. Chandler pumping plant, 2450 feet west and 1700 feet south, more or less from the northeast corner of Section 17, being within the west 1/2 of the northwest 1/4 of the southwest 1/4 of the northeast 1/4 of Section 17, T. 9 N., R. 26 E.W.M.

ii. 20,201 currently irrigated irrigable acres within the boundaries of Kennewick Irrigation District as designated by authority of the Secretary of the Interior and as described in KID Exhibit Nos. 160 through 160-42.

g. Period of Use

April 1 to October 31.

This Stipulation only addresses and intends to resolve all claims for the water rights in Acquavella by or for the Kennewick Irrigation District and its water users. Water rights of the United States for the Yakima Project, with the exception of the water rights for the Kennewick Irrigation District and its water users, are not finally determined

in this Stipulation.

This Stipulation and any issues contained herein, or in other writings evidencing the agreement of the parties, only applies to the specific water rights at issue here and are not intended to be an admission as to any legal or factual issue nor to waive any argument involving any of the parties or any other entities. In particular, the parties expressly renounce any intention that this Stipulation should serve to preclude the litigation or appeal of any legal issue arising from the application of the September 2, 1999 Report of the Court on Remand Re: Yakima-Tieton Irrigation District, Court Claim No. 1513, or any other decisions or orders of the Acquavella Court. Nothing in this Stipulation shall prejudice or be an admission as to the claims of the United States or Columbia Irrigation District.

2. COVENANT NOT TO SUE

KID and Ecology agree not to appeal, seek to reopen, challenge, nor support any challenge to the Yakama Nation's Conditional Final Order dated September 12, 1996, including issues litigated in the Yakama Nation's Reports of the Court Nos. 25 (Nov. 13, 1995) and 25A (June 21, 1996).

3. REQUEST FOR EXPEDITED KID REPORT

The parties respectfully request that the Court expedite the issuance of a Report of the Court for KID's water rights not inconsistent with the elements outlined in Paragraph 1 of this Stipulation.

4. WRITTEN AGREEMENT

In addition to the stipulation by the parties herein, a full written agreement incorporating the terms in Paragraph 1, above, and additional provisions between the parties, has been agreed upon. The Agreement itself is not intended to affect any non-signatory party.

5. REVOCATION OF STIPULATION

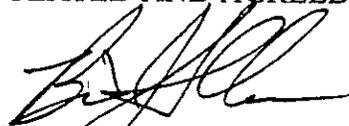
If for any reason the Court rejects, modifies, amends, or alters this Stipulation or fails to adopt a Report and Conditional Final Order with these terms on the water rights for the U.S./KID, the individual parties retain the right to revoke or rescind this Stipulation, provided that any such revocation or rescission shall not rescind Paragraph 2, above, or affect in any way the validity of the concurrent Agreement. In the event of a revocation or rescission, this Stipulation and any issues contained herein shall not be an admission as to any legal or factual issue nor waive any argument of the parties, and no party shall argue that it constitutes any such admission or waiver.

6. CONCLUSION

The opinion of the parties is that this Stipulation for the U.S./KID will save the parties and the Court significant time and expenses that would be necessary to litigate the complex issues regarding relinquishment and other related water issues for KID. It also promotes judicial economy and will likely shorten the Acquavella litigation.

DATED this 12th day of ~~May~~, 2001.
July

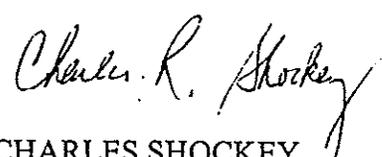
STIPULATED AND AGREED TO:



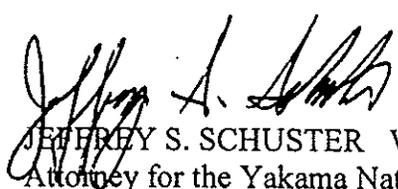
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
WATERS OF THE YAKIMA
DRAINAGE BASIN, IN
ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03
REVISED CODE OF WASHINGTON,

NO. 77-2-01484-5

STIPULATION

RE: FACTUAL AND LEGAL BASIS
FOR KENNEWICK IRRIGATION
DISTRICT SETTLEMENT

CLAIM NO. 629

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al,

Defendants.

FILED

JUL 12 2001

**KIM M. EATON
YAKIMA COUNTY CLERK**

The State of Washington Department of Ecology ("Ecology") and the Kennewick Irrigation District, after extensive Court-approved facilitated negotiations and mediation, hereby respectfully submit this stipulation to inform the Court's resolution of Claim No. 629.

I. FACTUAL AND LEGAL BASIS

For purposes of compromising and settling differences among the parties,¹ the parties agree that the water right elements stipulated to in Paragraph 1 of the concurrently filed Stipulation Re: Kennewick Irrigation District, Claim No. 629 are supported by legally sufficient

¹The "parties" to this Stipulation for Factual and Legal Basis for Kennewick Irrigation District Settlement, Claim No. 629 are Ecology and the Kennewick Irrigation District. While the United States and the Yakama Nation are parties with Ecology and the Kennewick Irrigation District to the concurrently filed Stipulation Re: Kennewick Irrigation District, Claim No. 629, the United States and the Yakima Nation are not parties to this Stipulation.

STIPULATION
RE: FACTUAL AND LEGAL BASIS FOR
KENNEWICK IRRIGATION DISTRICT
SETTLEMENT

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15276

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

1 evidence and consistent with the law as presently interpreted by the Court, as follows: (a) use
2 pursuant to the Bureau of Reclamation/KID repayment contracts of 1930 (Exhibit KID 11) and
3 1953 (Exhibit KID 27) as supplemented and amended to date, consistent with RCW 90.40; (b)
4 water right claims filed in this case under RCW 90.14; and (c) a permit to divert and beneficially
5 use 1,600 cfs of water on 51,000 acres (Exhibit KID 19); and (d) diversion records of the U.S.
6 Bureau of Reclamation (Exhibits KID 165 and 166).

8 For purposes of compromising and settling differences among the parties as to the water
9 rights for the U.S./KID, the parties have agreed that in 1990, the U.S./KID beneficially used
10 109,275 acre-feet of water for irrigation and other U.S./KID purposes and an additional
11 136,593.75 acre-feet of water to power hydraulic pumps. The sum of this usage is 245,868.75
12 acre-feet, of which 18,000 acre-feet is recognized to have had an 1891 priority date, and
13 227,868.75 acre-feet is recognized to have had a 1905 priority date.

15 Additionally, again only for purposes of settlement, the parties agree that KID had canal
16 breaks that prevented KID from use of a portion of its full 109,275 contract entitlement in 1981,
17 1982, 1983, 1984, 1985, 1995, 1996, and 1998. See attached declarations of Chuck Garner,
18 manager of KID, and Terry Clark, of KID. Significant disputes still remain among the parties on
19 the relinquishment statute, (RCW 90.14.140-180) and the state application/permit/certificate
20 processes (RCW 90.03.250-340) and their effect on the various parties in this adjudication. In
21 the absence of settlement, such questions (not to mention potential other questions including the
22 over fifty exceptions previously reserved by Major Claimants in Subbasin 5) are difficult, time
23 consuming, and costly to brief, resolve, and appeal. The parties note that RCW 90.14.150 states,
24 "Nothing in this chapter shall be construed to affect any rights or privilege arising from any
25
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1 permit to withdraw public waters . . .”

2 For purposes of compromising and settling differences as to the water rights of the
3 U.S./KID, the parties agree that the U.S./KID will permanently limit its combined diversions at
4 Prosser Dam as measured at Chandler pumping plant, at the headworks of the KID Main Canal,
5 and at Wanawish Dam to a net total of 231,017 acre-feet. The foregone 14,851.75 acre-feet has a
6 1905 priority date. As a result, the 1905 U.S./KID water right for combined irrigation, pumping
7 and other U.S./KID purposes is 213,017 acre-feet. The 1891 U.S./KID water right for irrigation
8 and other U.S./KID purposes is unchanged at 18,000 acre-feet. This Stipulation only addresses
9 and intends to resolve all claims for the water rights in Acquavella by or for the Kennewick
10 Irrigation District and its water users. Water rights of the United States for the Yakima Project,
11 with the exception of the water rights for the Kennewick Irrigation District and its water users,
12 are not finally determined in this Stipulation.
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14

15 This Stipulation and any issues contained herein, or in other writings evidencing the
16 agreement of the parties, only applies to the specific water rights at issue here and are not
17 intended to be an admission as to any legal or factual issue nor to waive any argument involving
18 any of the parties or any other entities. In particular, the parties expressly renounce any intention
19 that this Stipulation should serve to preclude the litigation or appeal of any legal issue arising
20 from the application of the September 2, 1999 Report of the Court on Remand Re: Yakima-
21 Tieton Irrigation District, Court Claim No. 1513, or any other decisions or orders of the
22 Acquavella Court. Nothing in this Stipulation shall prejudice or be an admission as to the claims
23 of the United States or Columbia Irrigation District.
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II. REVOCATION OF STIPULATION

If for any reason the Court rejects, modifies, amends or alters the concurrently filed Stipulation Re: Kennewick Irrigation District, Claim No. 629 or fails to adopt a Report and Conditional Final Order with the terms on the water rights for the U.S./KID specified in Paragraph 1 of the concurrently filed Stipulation Re: Kennewick Irrigation District, Claim No 629, the parties retain the right to revoke or rescind this Stipulation, provided that any such revocation or rescission shall not affect in any way the validity of the concurrent Kennewick Irrigation District Water Right Settlement Agreement. In the event of a revocation or rescission, this Stipulation and any issues contained herein shall not be an admission as to any legal or factual issue nor waive any argument of the parties, and no party shall argue that it constitutes any admission or waiver.

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III. CONCLUSION

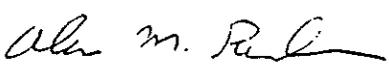
The parties assert that the agreed upon claims of the U.S./KID are supported by the facts, consistent with law, and should be accepted by the Court.

DATED this 7th day of June, 2001.

STIPULATED AND AGREED TO:


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